

In re application of RAMKRISHNA
Serial No. 09/316,897

REMARKS

35 USC §102(e) REJECTION

The Office action has rejected claims 1-8, 10-15, 17, 19-25, 27-39, and 43-47 under 35 USC §102(e) as being anticipated by Shigemi et al, U.S. Patent No. 6,279,006 (hereafter "Shigemi"). The Applicants respectfully traverse these rejections.

For a reference to qualify as prior art under §102(e), the reference must have a filing date "before the invention thereof of the applicant" (35 USC §102(e)(2)). The Applicants contemporaneously submit herewith a Declaration under §1.131, along with supporting documentation, evidencing that the Applicants' claimed subject invention was both conceived and reduced to practice in the United States prior to the filing date of Shigemi. The Declaration is signed by each of the named inventors except Roderick Chavez who is unavailable to sign the Declaration.

Because the Applicants' claimed subject invention was both conceived and reduced to practice in the United States prior to the Shigemi filing date, Shigemi does not have a filing date before the invention of the Applicants and does not qualify as prior art under 35 U.S.C. § 102(e). Therefore, Shigemi should be removed as a reference. As a result, Applicants do not need to further address the Office action's contention as to how Shigemi allegedly anticipates

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Applicant's claims, but Applicants expressly reserve the right to do so for any such contention properly raised in the future.

For at least this reason, Applicants respectfully submit that the rejections of claims 1-8, 10-15, 17, 19-25, 27-39, and 43-47 based on Shigemi are unfounded and should be withdrawn.

35 USC §103(a) REJECTION

The Office action has rejected claims 9, 16, 18, 26, and 40-42 under §103(a) as being unpatentable over Shigemi in view of Straub, U.S. Patent No. 5,905,492 (hereafter "Straub"). Applicants respectfully traverse these rejections.

As discussed above with reference to the §102(e) rejection of claims 1-8, 10-15, 17, 19-25, 27-39, and 43-47, Shigemi is not a valid prior art reference under §102(e).

A §103(a) rejection must rely on references that qualify as prior art under one of the sections of §102. Shigemi does not qualify as a prior art reference under 35 U.S.C. §102. Therefore, Applicants respectfully respond that the rejection of claims 9, 16, 18, 26, and 40-42 over Shigemi in view of Straub should be withdrawn for at least the foregoing reasons.

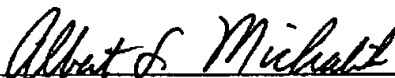
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CONCLUSION

In view of the foregoing remarks, it is respectfully submitted that claims 1-47 are patentable over the prior art of record, and that the Application is otherwise in good and proper condition for allowance. Withdrawal of the rejections is respectfully requested.

If in the opinion of the Examiner a telephone conference would expedite the prosecution of the subject Application, the Examiner is invited to call the undersigned attorney at 425-836-3030.

Respectfully submitted,



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